

Government of India
Ministry of Labour & Employment,
Central Government Industrial Tribunal-Cum-Labour Court-II, New Delhi.

Present:

Smt. Pranita Mohanty,
Presiding Officer, C.G.I.T.-Cum-Labour
Court-II, New Delhi.

INDUSTRIAL DISPUTE CASE NO. 126/2013

Date of Passing Award- 24.08.2022

Between:

Shri Pankaj Gupta,
S/o Shri Bhawani Prasad Gupta,
VPO, Anarwala, Garhi Cantt.,
Dehradun-248001.

Workman

Versus

1. The Branch Manager,
State Bank of India,
Johrigaon Branch, PO, Sinola,
Dehradun.

2. Shri Manmohan Singh,
C/o UAMP Associates,
C/o State Bank of India,
Johrigaon Branch,
Dehradun

Management

Appearances:-

Shri Ajay Gupta
(A/R)

For the claimant

Shri Ms. Kittu Bajaj
(A/R)

For the Management

A W A R D

The Government of India in Ministry of Labour & Employment has referred the present dispute existing between employer i.e. the management of State Bank of India, and its workman/claimant herein, under clause (d) of sub section (1) and sub section (2A) of section 10 of the Industrial Dispute Act 1947 vide letter No. L-12012/74/2013 (IR(B-I) dated 15/10/2013 to this tribunal for adjudication to the following effect.

“Whether the action of the management of State Bank of India, Johrigaon Branch in terminating the services of Shri Pankaj Gupta without complying with provisions of 25, F,G, II of the Id Act, is unjustified? To what relief workman is entitled to?”

As per the claim statement the claimant was working with the management SBI since February 2009 as a canteen boy at Dehradun and his last drawn salary was Rs. 6000/ per month. There was a contract between management No.1 and 2 and according to that contract executed on 01.05.2011 the claimant though entitled to Rs. 6000/- per month salary the

management No.1 i.e. SBI was paying only Rs. 3000/- per month to him. This was below the minimum wage notified by the state government. Objection being raised by the claimant the management No.1 and 2 were often assuring him to pay the arrear and with that hope he continued to work in the premises of management No.1 till March 2012 when both the managements suddenly prevented him from entering into premises of management No.1 which in effect was termination of service. At the time of such termination neither the notice of termination, notice pay or termination compensation were paid to him. Despite repeated demand the claimant was not paid the arrear of his salary. Finding no other way he raised a complaint before the conciliation officer and before that a demand notice was served on management no.1. The conciliation process was adjourned to different dates, but failed due to the non cooperation of the management. The conciliation officer then issued a failure report and the appropriate government made a reference. The workman has further stated that he is always ready and willing to work in the premises of the management and since the date of termination he is unemployed. Thus, in this claim he has prayed for a direction to the management no.1 to reinstate him in service with full back wage, other consequential benefits and damage including cost of the litigation.

The management no.2 i.e Manmohan Singh Care of UAMP Associates filed written statement stating that he had entered into a contract with management no.1 for supply of manpower and as per the terms of the said contract sweepers were appointed in the premises of respondent no.1 who are still continuing. But the claimant was never employed by this respondent No.2 and there exists no employer and employee relationship between them. Management No.2 also pleaded that the claimant has not prayed any relief against the management no.2 and as such the claim statement in respect of the management no.2 ought to be dismissed.

The management No.1 i.e SBI filed the written statement denying its employer and employee relationship with the claimant. By submitting a table showing the days of engagement month wise and remuneration paid to the claimant the respondent no.1 has stated that the claimant was never in continuous service of the management and he was being engaged for intermittent work only. During the period between 04.02.2009 to 30.04.2011 he had worked for 137 days only and got the remuneration according to the days of work done. After 01.05.2011 the bank entered into a valid contract with M/s UAMP Associates for housekeeping and sweeping work. The claimant was employed by M/s UAMP Associates for the said services and engaged in the Branch premises. M/s UAMP Associates replaced the service of the claimant w.e.f 01.04.2012 by engaging another person namely Raj Kamal. Hence, the allegation that the service of the claimant was illegally terminated by the management no.1 is false. It has also been stated that the management Bank had never paid salary to the claimant directly and no record to that effect is available. It has been reiterated that there was no

privity of contract between the claimant and the management no.1 and the management no.1 had a valid contract with management no.2 only for housekeeping work. Thus, the management no.1 has pleaded for dismissal of the claim petition.

The claimant filed rejoinder reiterating that he was working as a canteen boy in the premises of bank of management no.1 and his service was illegally terminated on 30.04.2011.

On these rivals pleading the following issues are framed for adjudication.

ISSUES

1. Whether the action of the management of SBI, Johrigaon Branch in terminating the services of Shri Pankaj Gupta without complying with provisions of 25F, 25G, 25H of the Id Act is unjustified? If so its effect?
2. To what relief the workman is entitled to and from which date?

The claimant testified as WW1 and was cross examined at length. At that juncture the Ld. A/R for the claimant expressed his intention to file an application for reexamination of WW1 but later on no such application was moved. But another application was moved by the claimant wherein a prayer was made for production of documents by management no.1 and 2. Accordingly by order dated 27.10.2016 both the managements were directed to produce the documents as per the application filed by the claimant. Liberty was also granted to the management to file attested photocopies instead of filing the originals. For the failure on the part of the management to file the documents, by order dated 17.01.2017 the claimant was directed to file secondary evidence of the documents which were called from the custody of the management. The claimant took several times for collection of the said documents and ultimately on 6th December 2018 expressed that the documents proposed to be proved as secondary evidence are not available with him. The matter was then adjourned for management evidence. The management no.2 instead of adducing evidence insisted for deletion of its name from the proceeding which was kept pending for consideration at the time of final hearing. By order dated 16th October 2019 the right of the management to adduce evidence was closed and opportunity was given to the management no.2 for adducing evidence. But management no.2 did not adduce evidence on the date fixed and its right too was closed and argument was heard.

At the outset of the argument the Ld. A/R for the management no.1 submitted that the claimant has miserably failed to establish its relationship as employee with management no.1. He was engaged for a brief period by the management no.2 and for reasons best known to the said management his service was replaced by another person. She also argued that management no.1 is a Nationalized Bank having its own rules and procedure for engagement of persons in the post of sweeper or any other group D

category. But the bank has no post like canteen boy. She also argued that when the management has denied the employer and employee relationship it is incumbent upon the claimant to prove the same. The Ld. A/R for the management no.2 on the other hand submitted that for a short period the claimant was engaged by it and deployed in the premises of management no.1 as a sweeper. For the dissatisfactory work performance he was replaced by another person. Since, no relief has been sought against management No. 2, its name should be deleted from the proceeding.

On the other hand the Ld. A/R for the claimant argued that the claimant was working in the premises of management No.1 from February 2009 to March 2012 when his service was brought to an abrupt end for the legal demands raised by him. The claimant was never the employee of management no.2 and was directly employed by management no.1. He had worked for 4 years continuously till March 2012. All the documents relating to his employment are available with management no.1 but the management intentionally withheld the same in order to deprive the claimant from his lawful rights. He also argued that when the claimant adduced evidence with regard to his engagement with the management and the management has failed to adduce any rebuttal evidence the same is to be accepted. Admittedly no oral or documentary evidence has been adduced by the management no.1 and 2.

In his oral testimony the claimant has supported the stand taken in the claim petition and filed photocopy of some papers marked as WW1/1 to WW1/15. During cross examination he admitted that no appointment letter was issued to him by the bank. He also admitted that no document is available with him to prove that he had worked in the bank for 240 days continuously before the alleged termination. During the pendency of the proceeding he had filed an application for calling some documents from the Bank management. Those documents were the attendance register and payment vouchers etc. since the Bank denied possession of the same the claimant was given the liberty of adducing secondary evidence. But no secondary evidence was placed on record. On the contrary the management no.2 filed photocopy of the contract entered between the state Bank and himself and the photocopies of the attendance register of the persons employed in the premises of management no.1. The said photocopy doesn't contain the name of the claimant anywhere. Thus, the evidence on record no way proves the employer and employee relationship between the claimant and the management no.1 nor the evidence proves that the claimant had worked for 240 days in the establishment of management no1 during the calendar year preceding the date of alleged termination.

The law is well settled that the burden of proving employer and employee relationship always rests on the person ascertain the same. In the case of **Ram Singh and others vs. Union territory of Chandigarh and**

others reported in (2004)1SCC page 126 it has been held that for determination of employer and employee relationship the factors to be considered inter alia are (i) control (ii) integration (iii) power of appointment and dismissal (iv) liability to pay remuneration (v) liability to organize the work (vi) nature of mutual obligation etc.

The factual matrix of the present dispute as evident from the oral and documentary evidence is that no letter of appointment was issued to the claimant. Similarly there is no document available on record to presume that the management bank was exercising control for integration of the work allegedly done by the claimant. There is also no material on record that the claimant was getting monthly remuneration like other employees of the Bank and he was signing the attendance register in acknowledgment of his daily attendance of duty. The mutual obligation in the nature of deducting PF subscription and extension of other benefits is no way evident from documents filed by the parties. Once the employer and employee relationship is not established it is not proved that the claimant's service was terminated and that to illegally without following the provisions of section 25F of the ID Act by the management. This point is accordingly decided against the claimant workman.

In view of the finding arrived in respect of the employer and employee relationship, holding that the claimant was not the employee of the management Bank and his service was not illegally terminated it is held that the claimant is not entitled to the relief sought for. Hence, ordered.

ORDER

The claim be and the same is dismissed on contest and the reference is accordingly answered against the workman. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

The reference is accordingly answered.

Dictated & Corrected by me.

Presiding Officer.
CGIT-Cum-Labour Court.
24th August, 2022.

Presiding Officer.
CGIT-cum-Labour Court.
24th August, 2022.